



F-6912

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Herbert WEGNER, et al.  
Serial No. : 09/806,216  
Filed : April 25, 2001  
For : DEVICE FOR GENERATING AN AEROSOL  
Group Art Unit : 1724  
Examiner : Charles S. Bushey

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7-1-03  
Frank J. Jordan

(Name of Registered Representative)

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06/30/03  
(Signature and Date)

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Mail Stop Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE

Sir:

In response to the Official Action dated May 27, 2003, and with regard to the requirement for election and restriction, Applicant hereby provisionally elects for the purpose of being completely responsive to the Official Action, should the

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requirement be made final, Species B as depicted by Figure 2 but respectfully traverses this restriction requirement. Claims 1, 5 (1), 8-14, 15 (1, 8, 9), 19, 20 (19{1, 8, 9}), 21-24, 29, 30, 33-41, 45-49 and 53-55 read on the elected Species.

Reconsideration and withdrawal of the restriction requirement are respectfully requested. It is thought that the claims are so directly related to each other that it is believed that all of the claims may properly be included in the same application.

In view of this extent of related subject matter in the claims, it is submitted that the restriction requirement is unwarranted inasmuch as it places an undue burden on Applicant and also on the Patent and Trademark Office in that all of this related subject matter has to be searched at least twice, once for the parent application and once for the Divisional application is such a Divisional application is filed. With regard to this matter, it is pointed out that the notice entitled: "Restrictions Between Inventions" in the May 13, 1975 issue of the Official Gazette (934 O.G. 450)), indicates that "if the search and examination of an entire application can be made without serious burden, the Examiner is encouraged to examine it on the merits, even though it includes claims to distinct or independent inventions".

In view of the fact that the claims in question here have related subject matter and in view of the intent expressed in the aforementioned Patent and Trademark Office Notice relating to restriction practice, reconsideration of the restriction requirement is respectfully requested and withdrawal of this restriction is respectfully requested.

It is further noted that the Commissioner of Patents at page 205 of the April 1975 issue of the "JOURNAL OF THE PATENT OFFICE SOCIETY" (Vol. 57), which is a portion of Commissioner Dann's address delivered before the Southwestern Legal Foundation, Dallas, Texas on March 7, 1975, stated as follows:

"The primary consideration in deciding whether to require restriction is one of expediency -- is it simpler for the Office to examine the subject matter in one application or in more than one, having in mind at the same time the additional burdens which may be caused the applicant if restriction is required? The requirement should always take into account the overall effort which will ultimately be spent. In practice I am afraid it is often made simply because the application at hand can be more quickly disposed of if there is restriction. This may work out to cause the Office and the applicant more total effort than if restriction had not been required. We are going to encourage a broader view of this problem."

Should the restriction requirement not be withdrawn, Applicant reserves the right to file a Divisional application at a later date on the non-elected claims.

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Accordingly, reconsideration and favorable action on the merits of this application are respectfully requested.

Applicant respectfully requests a two-month extension of time for responding to the Office Action. Please charge the fee of \$410.00 for the second one-month extension of time to Deposit Account No. 10-1250. Please charge any deficiency or credit any overpayment to Deposit Account No. 10-1250.

Respectfully submitted,

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FJJ/cj